

pricing guidelines when multiple services are offered under a single number, as addressed above.

Question 16(c). Reference to "All Material Terms" (Section 308.3)

The reference in the proposed rules to "all material terms" is vague as currently used and risks generating confusion among IC's, IP's, consumers and state regulatory agencies. If there are certain material terms which should always be disclosed, those should be specifically delineated within the rule in a safe harbor format. If additional situations come to the attention of the Commission, they can be added to the "must disclose" list at a later point in time. The rules would establish those disclosures which, at a minimum, must be made, and parties wishing to provide other disclosures, while not within the safe harbor, could be called upon to demonstrate that their disclosures were not in violation of the FTC Act. In order for this industry to continue to exist, without constant fear of challenge from a variety of overlapping state and federal regulatory jurisdictions, certain definite rules need to be adopted which, if complied with, assure protection for the parties.

Question 18. Pay-Per-Call Service Standards (Section 308.5)

Question 21. Pay-Per-Call Service Standards, Five Second Rule
(Section 308.5(b))

Pilgrim believes that the five second requirement is only one of several options that can be used to ensure that callers fully understand the charges being applied, and are provided ample opportunity to refuse charges and terminate the call. Pilgrim is concerned that the five second period may require a consumer to absorb substantial preamble information in a short time frame, and then act too quickly.

As an alternative to the five second timing requirement, Pilgrim favors the use of the "positive acceptance method" in which a caller must actively choose an option, and actively indicate acceptance, in order to continue. If no such option is selected, the caller will incur no charges.⁶

Pilgrim currently employs such positive acceptance methods for many of the services carried on its network. In addition, positive acceptance is required for the completion of collect calls pursuant to Section 64.715 of the FCC's rules. The positive acceptance method has two primary benefits. First, the IP would be required to make a clear statement regarding the

⁶ The positive acceptance method also has the benefit of permitting callers to freely roam, without cost, through options, and not be subject to charges until an option is selected, a full preamble is played, and positive acceptance is indicated. A current example of an application which may benefit from this concept is AT&T's VariaBill service.

service and charges, and an equally clear statement regarding the steps necessary to accept charges. Any preambles or messages assembled by IP's which were not sufficiently clear would not be likely to result in a consumer taking the positive acceptance step, therefore, charging cannot commence. This provides a powerful incentive for IP's to have clear and unambiguous messages.

By using positive acceptance, the caller also has a longer risk-free period in which to digest the preamble, and make a selection. The caller can have absolute confidence that he will not be charged before completing the positive acceptance. To prevent callers from remaining on the line and incurring continuing transport charges which the IP must pay, the provider

service, which are substantially higher than for other national services, only a few IC's have been able to afford national 900 service. This high cost of transport alone can be as much as 28 cents per minute, as compared to a transport cost of as low as 6 cents per minute for 800 service. The Commission should take into account the extremely high cost of transport for 900 service, and the underlying impact it will have on the cost of pay-per-call services, as it drafts its final rules.

Question 23. Exemption from Preamble Requirements (Section 308.5(d))

In addition to permitting certain limited exemptions from preamble requirements, Pilgrim requests that differential advertising requirements be adopted when a positive acceptance method is used. Some IP's may wish to provide a menu of possible options available to a customer on a single 900 number, prior to the initiation of billing. A single 900 number may be used to offer a variety of services, some of which are free and some of which contain charges, rather than pursuing the expensive alternative of acquiring a separate 900 number for each service. A single preamble or advertisement disclosure of cost may not be possible because of the multiple options available under one 900 number. In order to protect consumers, the Commission could require that the menu of options, and individual preambles for every option chosen, would occur at no cost to the caller, and

that positive acceptance would have to be indicated prior to any charges being levied.

Pilgrim specifically recommends that when the positive acceptance method of initiating charges is used, as in instances in which multiple menu items may be presented in a single 900 number, the advertising requirements in the rules be relaxed with regard to the specific charges which may be incurred. In exchange for enumeration of the specific charges in the advertisement, the IP would be required to clearly state the cost of the call in a preamble once a menu option is selected, and then require positive acceptance by the consumer before billing could begin. In addition, the advertising would have to clearly state that a charge applies, depending upon the particular options chosen during the call. The heavier burden of positive acceptance would effectively counter balance the lack of specific cost information in the advertisement and ensure that consumers are protected.

Question 29. Service Bureau Monitoring of Pay-Per-Call Services

Pilgrim is concerned that if service bureaus are given the authority, or assigned the responsibility, to monitor call content or make judgments as to legality of pay-per-call services outside of compliance with specific provisions in the Commission's and FCC's rules, the Commission may be causing First

Amendment problems for the service bureaus. In addition, such rules will impose liability on one party, the service bureau, for many actions which they may not be able to police, such as the advertising implemented by the IP. Liability should only be placed on the party who also logically has responsibility for and control over the activity.

Question 30. Feasibility of Requiring all Customers to have an Access Code or PIN Number

While it may not be technically feasible or cost effective to require all consumers of all pay-per-call services to have an access code or PIN number, the Commission may wish to consider the adoption of a safe harbor from some of the advertising, preamble or other rules when a customer can access a service using an access code or PIN number which the customer obtains in a previous and separate transaction.

Question 32. Provision of Records and Financial Information (Section 308.6)

Whenever a regulatory agency requires the retention and/or provision of certain documents, but does not specifically identify those documents, the regulated entity is in constant risk of violating the requirement. In some instances, the regulated LEC or IC may simply attach a different importance to

certain documents, and not retain those in which the Commission may be most interested.

It is preferable to follow the example set forth in the FCC's proposed rules (see Rule 64.1509), which specifically delineates the information that the FCC may, from time to time, request. Pilgrim requests that the Commission specifically identify records which must be kept, and also identify the retention period for these documents.

In addition, the resources of any IC with a substantial amount of IP or pay-per-call traffic may quickly be strained if required to maintain massive amounts of documents for long periods of time. Pilgrim, therefore, requests the Commission to adopt reasonable time retention standards, similar to FCC rules which require retention of records for eighteen months for billing disputes. See 47 C.F.R. § 42.6. In addition, in order to alleviate regulatory expense, Pilgrim requests that the Commission adopt record requirements which are similar or identical to those promulgated by the FCC to help prevent duplicative or excessive documentation retention. See 47 C.F.R. §§ 42.1-42.7.

Question 33. Definition Of "Preexisting Agreement"
(Section 308.7)

As the term "preexisting agreement" as used in Section 304(1)(A) of the Disclosure Act is, in fact, different from the language in Section 308.2(d) of the proposed rules, it is inevitable that confusion may arise between parties and regulatory authorities. Pilgrim requests that the rule specifically equate these two terms.

Question 34. Billing Errors (Section 308.7(a)(2)(i))

constitute a billing error and would be the responsibility of the LEC or IC which verified the charge and completed the call. This method of assigning liability firmly places the responsibility for control in the hands of the parties most capable to control telephone equipment, or responsible for verifying third party billing.

Question 37. Maintenance of Records (Section 308.7)

If the Commission decides to require billing entities to maintain records with respect to billing and collection of pay-per-call services, such rules should be consistent with the rules adopted under Section 308.6. Pilgrim's position on this proposal is otherwise the same as that expressed with respect to Question 32, above.

Question 38. Limitation Of Customer Liability

The Commission requests comments on a proposal to limit customer liability for unauthorized calls. Determining whether a call or charge was authorized or unauthorized is often one of the most difficult factual determinations that a carrier can be called upon to make. As witness to this fact, consider the extensive toll fraud proceedings pending before the FCC and in

federal court regarding unauthorized access to phone networks, and unauthorized billing to numbers.⁷

If the Commission determines that adoption of an unauthorized call rule is necessary, Pilgrim recommends the adoption of at least two specific provisions. First, Pilgrim requests that the Commission set aside a safe harbor under which the use of an access code or PIN number would always be deemed to be authorized use once the access code or PIN number was verified by the carrier. These codes and numbers are in the sole control of the consumer and would provide an accurate and reliable method for verifying the authenticity of calls.

In addition, Pilgrim supports the adoption of a limit to customer liability similar to that contained under the Truth in Lending Act and Fair Credit Billing Act, see 12 C.F.R. § 226.12. Requiring the customers to absorb some level of cost provides them protection from the full brunt of unauthorized charges, and places a limited responsibility upon customers to control access to their phones. As cost limits effectively allocate the responsibility for unauthorized call charges equally between carriers and customers, and place responsibility on both

⁷ See, e.g., Chartways Technologies, Inc. v. AT&T Communications, 6 FCC Rcd 2952 (Com. Car. Bur. 1991); Petition of Pacific Mutual Insurance Company for Declaratory Ruling and for the Establishment of Policies Relative to the Allocation of Responsibility for Toll Fraud Abuse Involving Combinations of Remote Access Network Services and Customer Premises Systems, File No. ENF-91-07, filed January 31, 1991.

parties to help control unauthorized calls, Pilgrim believes that this would be a worthwhile addition to the Commission's rules.

Question 40. New Types of Services

Due to the technical and business climate changes taking place in this industry, and the competitive and cost pressures associated with the provision of service through 900 numbers, the Commission should specifically recognize that other alternatives to 900 number services may be offered which would fall within the definition of pay-per-call services. Specific recognition of this fact, and a statement that the Commission's proposed requirements equally apply to these other services, will permit the orderly evolution of these services, and clearly indicate to the industry that any such evolution is subject to the same rules and regulations. Specific provisions could be made for petitions for amendments to the rules to accommodate new types of services.

Question 42. Impact on Small Business Entities

As noted above, the cost to small IC's of acquiring 900 NXX's is exponentially higher than the acquisition of service through any other exchange. As a result, the cost of all 900 services will be substantially higher than the provision of information through any other medium. The tremendous cost

differential operates as a disincentive to competition in this industry, and to the entry of small business entities.

Pilgrim believes that the Commission and the FCC must recognize and address these cost differentials, and determine whether such cost differentials represent just and reasonable practices or should be investigated. The Commission must take into account the impact of these cost pressures on any rules.

Question 44. Regulatory Alternatives

The pay-per-call industry is constantly evolving due to technological and business innovations. These innovations are not undertaken to evade or circumvent any rules, but are driven by technological developments and cost pressures. The Commission should attempt to identify types of operations which it deems to be an evasion of the rules, but provide broad latitude to the industry to seek other methods of complying with the rules which do not undermine the effectiveness or intent of the rules.

The Commission should bear competitive, pricing and service availability considerations in mind when considering these rules. The Commission should carefully evaluate whether its rules could inadvertently penalize providers who comply with federal law and are attempting to provide cost-effective services to customers.

Question 45. Aggregate Costs and Benefits of the Proposed Rule

A primary cost of compliance is the overlapping jurisdiction of state and federal regulatory authorities, and the multitude of interpretations that can be placed upon any statute or rule as applied to any one or series of factual situations. To the extent that rules adopted by the Commission are clear and definite and provide safe harbors, the cost impact on carriers and IP's will depend on whether the providers choose to comply with safe harbors, or to experiment with alternative methods of compliance which are not specifically protected, but permitted. The industry must be provided some assurances that, at a minimum, compliance with certain defined practices of safe harbors will operate as a defense to any action.

Pilgrim also requests that other rules be adopted which will permit carriers and IP's to obtain advisory opinions with regard to compliance with these rules. This will provide the Commission with an opportunity to consider new technologies as they evolve while maintaining uniformity over inherently

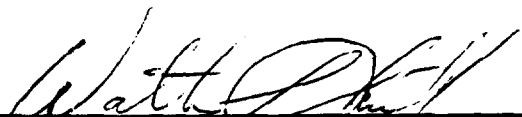
IV. Conclusion

In conclusion, Pilgrim requests that the rules adopted by the Commission be sufficiently clear and unambiguous to permit LEC's, IC's and IP's to operate in this industry with some assurance that they are in compliance with all applicable rules. Of particular benefit to carriers will be the adoption of safe harbors, with the option of meeting general rule requirements by means other than the safe harbors. The ability to seek uniform treatment of certain practices from the Commission, in order to avoid debating any particular issue on a state-by-state basis, will also be of great benefit to carriers and other parties.

Pilgrim looks forward to participating in the Commission's forum on April 22nd and 23rd, and appreciates the opportunity to file comments in this proceeding.

Respectfully submitted

PILGRIM TELEPHONE, INC.


Walter Steimel, Jr.
Fish & Richardson
601 Thirteenth Street, N.W.
Fifth Floor North

ACCESS SERVICE30. New England Telephone and Telegraph Company Rates and Charges (Cont'd)30.6 Switched Access Service (Cont'd)30.6.5 800 Access Service Customer Identification Charge

800 Access Service Customer Identification	<u>Rate</u>	
- Per call	\$0.000233	(R)

30.6.6 900 Access Service

900 Access Service	<u>USOC</u>	<u>Nonrecurring Charge</u>
Establishment Charge		
Maine LATA	N9YAX	\$ 5,640.35
Eastern Massachusetts LATA	N9YBX	14,080.88
Western Massachusetts LATA	N9YCX	1,676.10
New Hampshire LATA	N9YDX	14,022.40
Rhode Island LATA	N9YEX	2,737.60
Vermont LATA	N9YFX	8,376.00

30.6.7 800/900 Access Service

(A)	Subsequent Order -	<u>USOC</u>	<u>Nonrecurring Charge</u>
	Initial NXX Code Charge		
	Maine LATA	N9ZAX	\$1,400.00
	Eastern Massachusetts LATA	N9ZBX	6,848.00
	Western Massachusetts LATA	N9ZCX	491.20
	New Hampshire LATA	N9ZDX	3,020.00
	Rhode Island LATA	N9ZEX	1,024.00
	Vermont LATA	N9ZFX	1,894.40

(B)	Additional NXX Code Charge	<u>USOC</u>	<u>FID</u>	<u>Nonrecurring Charge</u>
	Maine LATA	N9ZAX	SNA	\$ 169.60
	Eastern Massachusetts LATA	N9ZBX	SNA	831.91
	Western Massachusetts LATA	N9ZCX	SNA	59.20
	New Hampshire LATA	N9ZDX	SNA	365.60
	Rhode Island LATA	N9ZEX	SNA	123.20
	Vermont LATA	N9ZFX	SNA	222.40

Issued: October 15, 1991

Effective: November 29, 1991

Managing Director - Access Matters
222 Bloomingdale Rd., White Plains, NY 10605

ACCESS SERVICE

31. New York Telephone Company Rates and Charges (Cont'd)

31.6 Switched Access Service (Cont'd)

31.6.4 Message Unit Credit

Message Unit Credit

- Per Originating FGA or CSL BSA
Access Minute

Rate

\$0.021658

(I)(x)

31.6.5 800 Access Service Customer
Identification Charge

Rate

800 Access Service Customer
Identification Charge
- Per Call

\$0.000233

(x) Issued under authority of Special Permission No. 92-259 of the Federal
Communications Commission.

Issued: April 20, 1992

Effective: July 1, 1992

Managing Director - Access Markets
222 Bloomingdale Rd., White Plains, NY 10605

ACCESS SERVICE31. New York Telephone Company Rates and Charges (Cont'd)31.6 Switched Access Service (Cont'd)31.6.6 800/900 Access Service Charge

<u>LATA</u>	<u>USOC</u>	<u>Service Establishment (Including 1st NXX Code)* Per LATA</u>	
Albany	N9YJX	\$ 3,806.78	(R)(x)
Binghamton	N9YKX	1,393.18	
Buffalo	N9YMX	3,960.38	
N.Y. Metro	N9YGX	18,834.22	
Poughkeepsie	N9YHX	956.67	
Syracuse	N9YLX	4,717.17	(R)(x)

<u>LATA</u>	<u>USOC</u>	<u>Subsequent Order (1st NXX Code added or deleted) Per LATA</u>	
Albany	N9ZJX	\$ 831.96	(R)(x)
Binghamton	N9ZKX	372.34	
Buffalo	N9ZMX	937.58	
N.Y. Metro	N9ZGX	8,168.19	
Poughkeepsie	N9ZHX	298.98	
Syracuse	N9ZLX	972.12	(R)(x)

* Service Establishment Charge does not apply to 800 Access Service.

(x) Issued under authority of Special Permission No. 91-351 of the Federal Communications Commission.

Issued: May 2, 1991

Effective: July 1, 1991

Managing Director - Access Matters
222 Bloomingdale Rd., White Plains, NY 10605

ACCESS SERVICE

31. New York Telephone Company Rates and Charges (Cont'd)31.6 Switched Access Service (Cont'd)31.6.6 800/900 Access Service Charge (Cont'd)

<u>LATA</u>	<u>Order Code</u>	<u>Additional NXX Code added or deleted per LATA, each (Service Establishment or Subsequent Order)</u>
Albany		\$ 138.50 (R)(x)
Binghamton		49.94
Buffalo	N9Z+X followed by FID SNA	156.22
N.Y. Metro		1,363.57
Poughkeepsie		49.93
Syracuse		161.86 (R)(x)

(x) Issued under authority of Special Permission No. 91-351 of the Federal Communications Commission.

Issued: May 2, 1991

Effective: July 1, 1991

Managing Director - Access Matters
222 Bloomingdale Rd., White Plains, NY 10605